

JS 44
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

John Snowman

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

IMCO Recycling, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David K. Watsky, Sonja J. McGill
Gillespie, Rozen & Watsky
3402 Oak Grove Ave, Suite 200
Dallas, Texas 75204 (214) 720-2009

ATTORNEYS (IF KNOWN)

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II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PTF | DEF | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
- Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1365(f)) <input type="checkbox"/> 862 Black Lung (823) <input type="checkbox"/> 863 DRWC/DRWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 460 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 660 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

USERRA 38 U.S.C § 4301, et. seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

Unliquidated

CHECK YES only if demanded in complaint:

JURY DEMAND:☐ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 4, 2003

Sonja J. McGill

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR - 4 2003
CLERK, U.S. DISTRICT COURT
By _____
Deputy

Defendants.

§ § § § §

Civil No. _____

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3. This Court has jurisdiction over Snowman's claims pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b)(3). Venue in this district is proper under 28 U.S.C. § 1391(b)(2) and 38 U.S.C. § 4323(c)(2) because IMCO maintains a place a business in Irving, Dallas County, Texas, where Snowman worked.

II. FACTUAL BACKGROUND

4. Snowman was hired by IMCO to work in its Irving, Texas office in December 1999 in the position of Corporate Manager of Transportation. In that position, Snowman had corporate responsibility for twenty-one (21) plants. As Corporate Manager of Transportation, Snowman reported directly to George Marshall ("Marshall"), who was Director of Logistics. In his position as Director of Logistics, Marshall reported to Jim Walburg ("Walburg"), who was Senior Vice President of Treasury and Administration. After Marshall left IMCO, Snowman reported directly to Walburg.

5. In approximately May 2001, IMCO promoted Snowman by giving him additional responsibilities for purchasing; with that promotion, Snowman's position became Corporate Manager of Transportation and Purchasing. As Corporate Manager of Transportation and Purchasing, Snowman reported directly to Ed Hoag ("Hoag"), President of Aluminum Recycling Division.

6. During Snowman's entire tenure with IMCO, he performed various jobs in an exemplary manner.

7. Prior to the terrorist attacks that occurred on September 11, 2001, Snowman served as a Captain in the United States Air Force Reserves. On or about September 12, 2001, Snowman told Hoag that he would likely be activated for service in the very near future. During the same

conversation, Snowman asked Hoag whether it would be alright for him to work outside of the office at his base in Fort Worth. Hoag told Snowman that he would think about Snowman's request and give him a response to his inquiry shortly thereafter. Unfortunately, IMCO's response to Snowman's request was to terminate his employment on or about September 14, 2001.

8. Reinstatement is not feasible.

III. CAUSE OF ACTION – DISCRIMINATION/USERRA

9. Snowman realleges and reincorporates the allegations contained in Paragraphs 1 through 8 as if fully contained herein.

10. IMCO's actions as described herein constitute unlawful discrimination on the basis of Snowman's military status in violation of 38 U.S.C. § 4311(a).

11. As a result of IMCO's actions, Snowman has suffered pecuniary losses, including but not limited to lost wages and other benefits associated with employment.

12. IMCO's actions in terminating Snowman were not made in good faith, and were knowingly made in violation of Snowman's rights under USERRA, thereby entitling him to liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

13. Snowman seeks attorneys' fees and costs of suit pursuant to 38 U.S.C. § 4323(h)(1) and (2).

WHEREFORE, Plaintiff John Snowman ("Snowman") requests that Defendant IMCO Recycling, Inc. ("IMCO") be cited to appear and answer, and that on final trial, Snowman be awarded the following:

- a. Actual and compensatory damages in a sum in excess of the minimum jurisdictional limits of the Court;
- b. Liquidated damages;

- c. Pre-judgment interest as provided by law;
- d. Post-judgment interest as provided by law;
- e. Attorneys' fees pursuant to 38 U.S.C. § 4323(h)(2);
- f. Costs of suit pursuant to 38 U.S.C. § 4323(h)(1); and
- g. Such other and further relief to which Snowman may be justly entitled.

Respectfully submitted,

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By Sonja McGill
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Sonja J. McGill
State Bar No. 24007648

ATTORNEYS FOR PLAINTIFF JOHN SNOWMAN

Dated: April 4, 2003